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Supreme Court of the United States

October Term, 1962

No. 70

IRVING J. WOLF, ROBERT H. DAVIDSON, RICHARD S. HULL and FREDERICK KATZENELL,

Petitioners,

v.

ARNOLD A. WEINSTEIN, JEROME FRIED, NAZARETH FAIRGROUNDS & FARMERS' MARKET, INC., *et al.*

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

PETITION OF RESPONDENT ARNOLD A. WEINSTEIN FOR REHEARING

ARNOLD A. WEINSTEIN,
Counsel pro se,
225 Broadway,
New York 7, N. Y.

LODER APPEAL PRESS, INC., 41 VESEY STREET, NEW YORK, N. Y. WOrth-2-0689

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Respondent Weinstein prays for a rehearing as to so much of the decision of this Court on April 15, 1963, as held 249 of the Bankruptcy Act applicable to this Respondent and required him to return to the Debtor the salary he received over the past eight years.

I

In applying §249 of the Bankruptcy Act to respondent Weinstein, this Court did not follow the test for applicability of the statute as laid down in its decision and did not afford him due process of law.

The rule for determining the applicability of §249 was stated by this Court as follows:

> "The application of section 249 turns not upon the manner in which, or the time at which, payment is made, but rather upon the nature of the services and responsibilities which are being compensated" (p. 15).

Compensation to respondent Weinstein was ordered for the services he rendered and the responsibilities he undertook in the day to day business operations of the Debtor. This significant and relevant fact is not disputed. His services were not related to the court reorganization of the Debtor.

This Court has pointed out that an officer of a Debtor is not "*necessarily*" within section 249 and that "whether the particular applicant is a 'fiduciary' under the statute is a question which requires careful appraisal of the relevant facts" (p. 18). In this light, the arguments advanced by respondent Fried in his companion petition apply fully as well to respondent Weinstein. As interpreted and applied by this Court, §249 deprives respondent Weinstein of due process because it fails to provide a standard of certainty for its application to him since he may or may not be a "fiduciary" under the statute depending upon a "careful appraisal of the relevant facts" (p. 18). Respondent Weinstein is entitled to more than

this vague criterion before being penalized and dealt with in a manner which this Court concedes is severe and harsh (p. 20).

CONCLUSION

This Court should reconsider its determination and affirm the Court of Appeals by holding §249 of the Bankruptcy Act inapplicable to respondent Weinstein.

Dated: New York, N. Y.
May 1, 1963

Respectfully submitted,

ARNOLD A. WEINSTEIN,
Counsel pro se.

Certificate of Counsel

The undersigned, counsel *pro se*, does hereby certify that the foregoing petition for rehearing is presented in good faith and not for delay.

ARNOLD A. WEINSTEIN,
Counsel pro se.